

Exhibit H

**Letter from Nell Gaither, President, Trans
Pride Initiative, to Hon. Norman K. Moon
and Hon. Joel C. Hoppe, dated March 2, 2018
(referenced in Fn. 17)**



Honorable Joel Hoppe
United States Magistrate Judge
116 North Main Street, Room 314
Harrisonburg, VA 22802

Honorable Norman K. Moon
United States District Judge
P.O. Box 657
Lynchburg, VA 24505

March 2, 2018

re: concerning statements by counsel in court documents in the case of Cantwell v. Gorcenski et al. (Western District of Virginia, Case Number 3:17-cv-00089)

To the Honorable Magistrate Judge Hoppe and the Honorable Judge Moon:

My name is Nell Gaither, and I am current President of Trans Pride Initiative, a nonprofit organization that advocates for the rights of transgender persons in accessing healthcare and other social services, and works to reduce discrimination and violence targeting transgender persons in prison and the free world.

I have been provided information by attorney Moira Meltzer-Cohen, who with colleagues Sandra Freeman and Pam Starsia are representing a Ms. Emily Florence Gorcenski in a civil action (Case Number 3:17-cv-89 currently before your court), concerning treatment of her client by the plaintiff Mr. Chris Cantwell and his counsel Mr. Elmer Woodard, III.

In response to a motion by Ms. Meltzer-Cohen to correct the caption in the case to reflect her client's legal name, opposing counsel has responded in an unbecoming manner, and appears to be misrepresenting the intentions of Ms. Gorcenski for no other reason than to attempt to be abusive. I would be pleased if you would consider the following information and how it relates to the impact such actions have on transgender individuals and the community as a whole.

Mr. Woodard's response to that motion includes the following:

9. Despite his efforts to the contrary, Gorcenski is not in fact a female human being, having been born with and retaining the XY chromosome. If convicted and sent to prison in Virginia, he would go to a male prison, whether he liked it or not. Virginia Courts, generally require that the caption list all aliases of the defendants. Further, Gorcenski's presenting himself as a female is untruthful, mendacious, and deceptive. He is free to suffer the consequences of his decision, but has no right to



force others to condone his lie. He further has no right to ask a court of law to condone his lie, nor to ask that court to force others to condone it. The United States District Court exists to determine the truth, not to condone falsehoods nor encourage or force others to do so. A United States District Court Judge is not a “transmagistrate;” the magistrate judge is not a “transjudge” any more than counsel for Plaintiff is “transthin,” “transyoung, or trans-not-balding.” Convicted criminals are not “translawful.” Cars with rolled back odometers are not “transmileage;” and perjury is not “transtruth, except to used car salesmen and perjurers.

10. This motion should not be transdenied, but rather granted.

Such statements are not only far outside what should be considered professional conduct by any responsible attorney, they should be considered abusive and an attempt to encourage violence against Ms. Gorcenski.

Regardless of the intent of Mr. Woodard’s efforts, an examination of the veracity of his statements will show that they are not founded on an understanding of human biology or psychology, but instead are built from bias. Mr. Woodard states that Ms. Gorcenski “is not in fact a female human being, having been born with and retaining the XY chromosome.” It is unlikely that Mr. Woodard has actually analyzed Ms. Gorcenski’s DNA to determine if it adheres to one of the assumed normative constructs of 46,XX or 46,XY or if her DNA may actually be, for example, 45,X0, 47,XXY, or one of a few dozen other alternative DNA constructs that include chimeric and mosaic conditions that lie outside the assumed sex binary. Geneticist Eric Vilain, of the University of California, Los Angeles, Institute for Society and Genetics, and now with the Center for Genetic Medicine Research at Children’s National Health System, has also identified a number of additional components beyond the SRY (sex determining region of the Y chromosome) gene that influence sex differentiation, including the DAX1 and WNT4 genes.¹ Simplistic reference to “XY” chromosomes to identify one’s sex in a complex biological system reveal much more about one’s prejudices than biology or social role determinants.

Such stereotypes are broadly harmful, and their reference in a court of law can misrepresent and encourage discrimination and even violence in society. The model and entertainer Eden Atwood is an outspoken XY woman with Androgen Insensitivity Syndrome (AIS). Based on Mr. Woodard’s reductionist theory of biologic sex as simplistically based on presumptions about a persons XX or XY chromosomes, we can only assume that he would also place Ms. Atwood in a “male prison.”² Due to misunderstandings about the biology of sexual differentiation—a misunderstanding so eloquently exhibited in Mr. Woodard’s revealing prose—it is prevalent and very nearly universal in the prison system for transgender persons to be mis-housed; that prevalence of mis-housing means we could not guarantee that Ms. Atwood would not be sent to a prison facility designated for men. If operated by Mr. Woodard, we would almost guarantee

1. Lehrman, S. (2007, May 30). When a Person Is Neither XX nor XY: A Q&A with Geneticist Eric Vilain. *Scientific American*. Available online at: <https://www.scientificamerican.com/article/q-a-mixed-sex-biology/>. Annenberg Learner. (2018). “Biology of Sex and Gender: Expert Interview Transcripts, Eric Vilain, MD, PhD.” Available online at: <https://www.learner.org/courses/biology/units/gender/experts/vilain.html>.
2. Hanan, M. (2008, August 11). Women With Male DNA All Female. *ABC News*. Available online at: <http://abcnews.go.com/Health/MedicalMysteries/story?id=5465752>.



that she would be so mis-housed out of a desire, common for persons like Mr. Woodard, to abuse human beings over scientific knowledge he does not wish to understand.

Related, Mr. Woodard states that Ms. Gorcenski “would go to a male prison, whether [she] liked it or not.” We work with dozens of transgender men and women in the Texas prison system, and nearly all—particularly the transgender women—have been subjected to sexual abuse, including rape, coerced sex, forced sex in exchange for protection, and extortion under threat of sexual assault. The Bureau of Justice Statistics found in 2015 that in the 12 months prior to their survey, 11% of transgender prisoners had been sexually assaulted by prison staff and 24% by other prisoners.³ In 2014, the organization Black and Pink conducted a survey of 1,118 persons in prison identified as lesbian, gay, bisexual, transgender, or queer and found that 79% of trans women reported sexual assault by another incarcerated person or prison staff during their incarceration.⁴ That Mr. Woodard appeals to a situation that results in the wholesale abuse of a specific demographic highlights just one particular way that prisons and the justice system, supported by the attitudes and prejudices of persons like Mr. Woodard, participate in the abuse of transgender persons.

Mr. Woodard appeals to stereotypes again by stating that “Gorcenski’s presenting [herself] as a female is untruthful, mendacious, and deceptive. [She] is free to suffer the consequences of [her] decision, but has no right to force others to condone [her] lie. [She] further has no right to ask a court of law to condone [her] lie, nor to ask that court to force others to condone it.” In fact, as I understand, a court of law has condoned Ms. Gorcenski’s truth by awarding a legal name correction. I would propose to the court that it is persons like Mr. Woodard—using abusive tactics that appeal to inaccurate stereotypes and a basic misunderstanding of human diversity—who attempt to force transgender persons to bury their truth and live a lie. It is the bravery of persons like Ms. Gorcenski who have allowed an increasing number of transgender persons to begin to shed light on the harmful strictures and stereotypes that continue to be promoted by persons like Mr. Woodard, resulting in many general disparities such as an unemployment rate among transgender persons that is three times the national average.⁵

Transgender persons are deeply affected by social stigma such as that exhibited by Mr. Woodard. Social stigma can lead to chronic minority stress that includes or exacerbates such concerns as “anxiety, depression, self-harm, a history of abuse and neglect, compulsivity, substance abuse, sexual concerns, personality disorders, eating disorders, psychotic disorders,

3. Beck, A.J. (December 2014). Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Available online at: https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf.

4. Lydon, J. (2015). Coming Out of Concrete Closets: A Report on Black & Pink’s National LGBTQ Prisoner Survey. Black & Pink: Dorchester, MA. Available online at: <http://www.blackandpink.org/wp-content/uploads/Coming-Out-of-Concrete-Closets-Black-and-Pink-October-21-2015.pdf>.

5. James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality. Available online at: <http://www.ustranssurvey.org/reports>.



and autistic spectrum disorders.”⁶ The American Psychological Association notes that transgender and gender diverse (TGNC) persons “who receive social support about their gender identity and gender expression have improved outcomes and quality of life (Brill & Pepper, 2008; Pinto, Melendez, & Spector, 2008). Several studies indicate that family acceptance of TGNC adolescents and adults is associated with decreased rates of negative outcomes, such as depression, suicide, and HIV risk behaviors and infection (Bockting et al., 2013; Dhejne et al., 2011; Grant et al., 2011; Liu & Mustanski, 2012; Ryan, 2009).”⁷ With professional expertise such as this readily available, promotion of stigma such as Mr. Woodard does could be considered psychological abuse.

I will assume that the court understands how Mr. Woodard’s imaginative use of terminology attempts to encourage the court to participate in stigmatizing the transgender community. Such conduct is childish. I do not know the particulars of court protocol, but would suggest that if there is any way to sanction behavior like this through disciplinary action, the court should do so to discourage such behavior among professionals. I believe that the court can point to Mr. Woodard’s own words in supporting such an action: “The United States District Court exists to determine the truth, not to condone falsehoods nor encourage or force others to do so.” By filing such motions, Mr. Woodard is doing precisely that.

Sincerely,

Nell Gaither, President
Trans Pride Initiative

6. World Professional Association for Transgender Health. (2011). Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, Version 7. Available online at:
http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926.

7. American Psychological Association. (December 2015). Guidelines for Psychological Practice With Transgender and Gender Nonconforming People. In *American Psychologist*. Available online at:
<https://www.apa.org/practice/guidelines/transgender.pdf>.